

REMARKS

Claims 1-81, 101-110, 115-124, 142-152, 154-161, 164-166, 169-176, and 201-211 were pending. Claims 1-36, 38-52, 79-81, 101-110, 155-161, 164-166, 169-176, and 201-211 have been cancelled as non-elected subject matter. Claim 37 has been amended to remove dependency on a non-elected claim. Support for the amendment to claim 37 can be found at least in claims 1 as originally filed. Accordingly, claims 37, 53-78, 115-124, 142-152, and 154 will be pending upon entry of the instant amendment.

No new matter has been added. Claim cancellations were done solely to expedite prosecution. Applicants reserve the option to further prosecute the same or similar claims in the present or another patent application.

The Examiner has required restriction between the following inventions in the above-identified application:

- Group I: Claims 1-36, 79-81, 169-176, 102-105, and 203-211, drawn to a method of making a cargo moiety cochleate comprising introducing a cargo moiety to a liposome or negatively charged lipid in the presence of a solvent such that the cargo moiety associates with the liposome, classified in class 427, subclass 213.3.
- Group II: Claims 37, 53-78, 115-124, 142-152, and 154, drawn to one or more cargo moiety-cochleates, classified in class 424, subclass 450.
- Group III: Claims 38-43, 106-110, 155-161 and 164-166, drawn to a method of treating a subject comprising administering one or more cargo moiety-cochleates, classified in class 514, subclass 44, for example.
- Group IV: Claims 44-52, 201 and 202, drawn to a kit comprising a lipid or an aggregation inhibitor, classified in class 427, subclass 2.14.

Accordingly, Applicants hereby elect Group II, Claims 37, 53-78, 115-124, 142-152, and 154 for continued examination, with traverse. Applicants respectfully argue that one-way distinctness has not been established between the listed groups, *e.g.*, between the methods of claims 169-176 and the compositions of claims 115-124, 142-152 and 154. Accordingly, this election was made solely to expedite prosecution, and should in no way be considered an

acquiescence to the Office Action. Furthermore, Applicants reserve the right to further traverse the restriction requirement in this application or further applications.

The Examiner has also required, at page 6 of the instant Office Action and upon the election of Group II, restriction between the following species in the above-identified application under 35 USC §121:

Group 1: solvent

Group 2: cargo moiety

Group 3: aggregation inhibitor

as well as an election of one single member of the Group elected.

Accordingly, Applicants hereby elect Group 3, aggregation inhibitors, with an additional election of methylcellulose, for continued examination.

The Examiner, at page 7 of the instant Office Action, has also required election of a single member of each of the following species:

1: a first protonized cargo moiety

2: a cargo moiety

3: aggregation inhibitor

As a preliminary matter, Applicants respectfully point out that the claims alluded to by the Examiner in reference to Group 2 (claims 71-72) are claims that include a cargo moiety, *not* a second protonized cargo moiety. Applicants have made their election based on Group 2 being a cargo moiety.

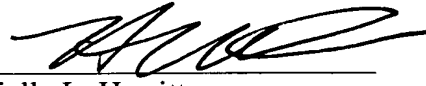
Accordingly, Applicants elect protonized vancomycin for Group 1, a nutrient for Group 2 and methylcellulose for Group 3. It is unclear to Applicants whether an election of one of the above species is also required. If such an election is required, Applicants elect Group 3, aggregation inhibitors, for continued examination.

It is Applicants' understanding that under 35 U.S.C. §121, because an election of single species for prosecution on the merits is required, the claims will be restricted to this species if no generic claim is finally held allowable. Applicants further understand that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species for all of the above species elections, which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. §1.141 *et seq.*

An appropriate Request for Extension of Time is being filed concurrently herewith.
Please charge any underpayment and credit any overpayment to our Deposit Account No. 12-0080, under Order No. BSZ-050 from which the undersigned is authorized to draw.

Dated: December 16, 2005

Respectfully submitted,

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